MONTANA LEGISLATIVE HISTORY

Chapter 584 19 77

Bill H 261 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Finance and Claims		
Hearing Date(s)	Jan 24	✓ C	Hearing Date(s)	Apr 13	✓ C
	Jan 28	✓ C		Apr 14	✓ C
		C			C
		C			C
Date Out	Jan 28	✓ C		Apr 14	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LC 0398/01

H. BILL NO. 261

INTRODUCED BY Ramirez, Mular, Thoreson, Kenny, Lund, Johnson, Scully, Tropila, Towe, Ryan

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE MANDATORY MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE; AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1, 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401, 94-5-503, 95-1507, and 95-2206, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"54-132. Criminal sale of dangerous drugs. ~~(a)~~ (1) A person commits the offense of a criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away, manufactures, prepares, cultivates, compounds, or processes any dangerous drug as defined in this act.

(2) A person convicted of criminal sale of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in [section 14 of this act].

~~(b)~~ (3) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not less than ~~one (1)~~ year ~~nor~~ or more than life.

~~(c)~~ (4) Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"54-133. Criminal possession of dangerous drugs. ~~(a)~~ (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

~~(b)~~ (2) Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed ~~sixty (60)~~ grams of marihuana, or ~~one (1)~~ gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed ~~one thousand dollars ($1,000)~~ or by imprisonment in the county jail not to exceed ~~one (1)~~ year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is

punishable by a fine not to exceed ~~one thousand dollars~~ ~~($1,000)~~ or by imprisonment in the county jail not to exceed ~~one (1)~~ year or in the state prison not to exceed ~~three (3)~~ years or by both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in [section 14 of this act].

~~(c)~~ (4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection ~~(b)~~ (2) or (3) shall be imprisoned by imprisonment in the state prison not to exceed ~~five (5)~~ years.

~~(d)~~ (5) A person of the age of ~~twenty-one (21)~~ years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court."

Section 3. Section 54-133.1, R.C.M. 1947, is amended to read as follows:

"54-133.1. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in ~~section~~ 54-301. No person commits the offense of criminal possession with intent to

sell marijuana unless he possesses one kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 54-301(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in [section 14 of this act].

~~(2)~~ (3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than ~~twenty (20)~~ years.

~~(3)~~ (4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by ~~section~~ 54-301 are exempt from this section."

Section 4. Section 94-5-102, R.C.M. 1947, is amended to read as follows:

"94-5-102. Deliberate homicide. (1) Except as provided in ~~section~~ 94-5-103 (1) (a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or

violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in ~~section~~ 94-5-105~~,~~ or by imprisonment in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~one hundred (100)~~ years, except as provided in [section 14 of this act]."

Section 5. Section 94-5-103, R.C.M. 1947, is amended to read as follows:

"94-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~forty (40)~~ years, except as provided in [section 14 of this act]."

Section 6. Section 94-5-202, R.C.M. 1947, is amended to read as follows:

"94-5-202. Aggravated assault. (1) A person commits

the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another; ~~or~~

(b) bodily injury to another with a weapon; ~~or~~

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~twenty (20)~~ years, except as provided in [section 14 of this act]."

Section 7. Section 94-5-302, R.C.M. 1947, is amended to read as follows:

"94-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation~~,~~ or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~ten (10)~~ years, except as provided in [section 14 of this act]."

Section 8. Section 94-5-303, R.C.M. 1947, is amended to read as follows:

"94-5-303. Aggravated kidnapping. (1) A person

commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation~~,~~ or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward~~,~~ or as a shield or hostage; ~~or~~

(b) to facilitate commission of any felony or flight thereafter; ~~or~~

(c) to inflict bodily injury on or to terrorize the victim or another; ~~or~~

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) ~~A~~ Except as provided in [section 14 of this act], a person convicted of the offense of aggravated kidnapping shall be punished by death as provided in ~~section~~ 94-5-304~~,~~ or be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~one hundred (100)~~ years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~ten (10)~~ years."

Section 9. Section 94-5-401, R.C.M. 1947, is amended to read as follows:

"94-5-401. Robbery. (1) A person commits the offense of robbery if, in the course of committing a theft, he:

(a) inflicts bodily injury upon another; ~~or~~

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony~~,~~ other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~forty (40)~~ years, except as provided in [section 14 of this act].

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft~~,~~ or in flight after the attempt or commission."

Section 10. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without

consent shall be imprisoned in the state prison for ~~any~~ a term ~~not to exceed~~ of not less than 2 years or more than ~~twenty (20)~~ years, except as provided in [section 14 of this act].

(3) If the victim is less than ~~sixteen (16)~~ years old and the offender is ~~three (3)~~ or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term ~~not to exceed~~ of not less than 2 years or more than ~~forty (40)~~ years, except as provided in [section 14 of this act].

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) (a) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

~~(a)~~ (i) ~~Evidence~~ evidence of the victim's past sexual conduct with the offender;

~~(b)~~ (ii) ~~Evidence~~ evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(b) If the defendant proposes, for any purpose, to offer evidence described in ~~(a) or (b)~~ subsection 5(a)(i) or 5(a)(ii), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

Section 11. Section 95-1507, R.C.M. 1947, is amended to read as follows:

"95-1507. Sentence of imprisonment for persistent felony offender. (1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than ~~five (5)~~ years ~~nor~~ or more than ~~one hundred (100)~~ years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of ~~one (1)~~ year could have been imposed; ~~and~~

(b) less than ~~five (5)~~ years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the ~~offenders release~~ offender's release on parole or otherwise from a prison or other commitment imposed as a result of the previously felony conviction; and

(c) the offender was more than ~~twenty-one (21)~~ years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post conviction hearing.

(4) Except as provided in [section 14 of this act], the imposition or execution of the first 5 years of a sentence imposed under subsection (2) may not be deferred or suspended."

Section 12. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"95-2206. Sentence. (1) Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty, the court may:

~~(1)~~ (a) ~~Defer~~ defer imposition of sentence for a period not to exceed ~~one (1)~~ year for any misdemeanor, for a period not to exceed ~~three (3)~~ years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or

conditions may include:

~~(a)~~ (i) jail base release;

~~(b)~~ (ii) jail time not to exceed ~~ninety (90)~~ days;

~~(c)~~ (iii) conditions for probation;

~~(d)~~ (iv) restitution;

~~(e)~~ (v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

~~(f)~~ (vi) any combination of the above.

~~(2)~~ (b) ~~Suspend~~ suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

~~(a)~~ (i) jail base release;

~~(b)~~ (ii) jail time not to exceed ~~(90)~~ days;

~~(c)~~ (iii) conditions for probation;

~~(d)~~ (iv) restitution;

~~(e)~~ (v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

~~(f)~~ (vi) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise

order.

~~(3)~~ (c) ~~Impose~~ impose a fine as provided by law for the offense~~.~~;

~~(4)~~ (d) ~~Commit~~ commit the defendant to a correctional institution with or without fine by law for the offense~~.~~;

~~(5)~~ (e) ~~Impose~~ impose any combination of subsections ~~(2)~~ (1)(b), ~~(3)~~ (1)(c), or ~~(4)~~ (1)(d) above.

~~(6)~~ (2) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

~~(7)~~ (3) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection ~~(6)~~ (2).

(4) Except as provided in [section 14 of this act], the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following

sections may not be deferred or suspended: 54-132(2), 54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2), 94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and 94-5-503(2) and (3).

(5) Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 13. There is a new R.C.M. section that reads as follows:

Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to

a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in [section 14 of this act].

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in [section 14 of this act]. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in [section 14 of this act].

Section 14. There is a new R.C.M. section that reads

as follows:

Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 95-1507(4), 95-2206(4), and subsection(3) of [section 13 of this act] do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim.

Section 15. There is a new R.C.M. section that reads as follows:

Hearing to determine application of exceptions. (1) When the application of an exception provided for in [section 14 of this act] is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

-End-

STATE OF MONTANA

REQUEST NO. 141-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for House Bill 261 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 261 is an act to require mandatory minimum prison sentences for certain violent and drug related crimes and for any crime committed with a dangerous weapon without the option of deferred imposition or suspension of execution of the sentence.

ASSUMPTIONS:

1. Montana Board of Crime Control has 1975 data that shows approximately 75 persons convicted of violent and drug related crimes would receive deferred or suspended sentences under current law.
2. The 75 deferred or suspended sentences under current law would receive a two year sentence under the proposed law.
3. The average length of stay in the prison on a two year sentence is four months.
4. The average daily cost per person in the prison was $27.52 for FY 76.
   The average daily cost per person on probation was $ 0.65 for FY 76.
   The net increase in cost to the state would be $26.87 per day.
5. Additional space could be provided to handle the increased population caused by House Bill 261.

FISCAL IMPACT:

	FY 78	FY 79
Increased cost of proposed legislation	$241,830	$241,830

LONG-RANGE EFFECT:

Since existing prison facilities are already overcrowded, additional facilities may be required to accommodate the population increase due to the proposed legislation.

Richard L. Irvine

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1-27-77

JUDICIARY COMMITTEE

EXECUTIVE SESSION
January 24, 1977

The executive session of the Judiciary Committee was called to order after a short recess, with Chairman Scully presiding.

CHAIRMAN SCULLY appointed a sub-committee to examine the mandatory sentencing bills, numbers HB 261 and 188. The committee is composed of Representatives Ramirez, Chairman, Holmes, Conroy, Seifert, and Courtney and they are to report by Friday.

HOUSE BILL #7:
REPRESENTATIVE LORY mentioned that the intent of the bill was to be concerned with district judges and the supreme court and not the JP court. He moved an amendment on lines 5, 8, 11 and 15. He explained the districts and the cost of the additional judges. There would be 20 districts and 31 district judges at a cost of $83,000.
The motion to amend carried with the vote unanimous.
REPRESENTATIVE LORY moved "do pass as amended". Then followed some discussion about the cost of the training program.
He mentioned that it would be more standardized and more uniform across the state. The LEAA funds are to start out the program and are usually cut off in 2 or 3 years. Discussion about the competency of various judges and that there was no way to test a judge before he became a judge. The motion carried with the vote unanimous.

HOUSE BILL # 65:
REPRESENTATIVE RAMIREZ explained the finding of fact and conclusion of law. What this does is make it subject to review. Discussion about what the fiscal cost would be. It was mentioned that right now a district judge gets from 25 to 27,000 dollars. Mr. Ramirez moved the adoption of the proposed amendments. The motion carried with the vote unanimous. REPRESENTATIVE HOLMES moved "do pass as amended". After some further discussion the question was called and the motion carried with the vote unanimous.

The meeting adjourned at 11:20 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

The hearing opened on House Bill #228:

REPRESENTATIVE HAND, DISTRICT #82:
The intent of this bill is to extend the law for people who are down and out. He discussed some of the cases that might cause a person to want to change their name.

PROPONENT, RUSSELL LaVIGNE, Jr., MONTANA LEGAL SERVICES:
Under present law the publication costs can range anywhere from 40 to 50 dollars. I believe the bill would help people who cannot afford to pay that cost. He explained his work and how the need might arise for someone to change their name.

There were no opponents.

Representative Hand stated that this was something that people really need. It is something we should consider very carefully.

The hearing closed on House Bill #228.

The hearing opened on House Bill #261.

REPRESENTATIVE RAMIREZ, DISTRICT #64:
This bill will require mandatory prison sentences for certain drug-related crimes. He went on to explain the bill more fully. There is a wide disparity between judges and this is unfair and whenever we have a system that is unfair it engenders bitterness. The system allows the offender to try to get the best deal he can, and it can be beaten. The system is so flexible that they are going to get the best deal that they can. He went on to explain how this is possible under present law. This bill is designed to give some guidelines and it provides some exceptions. The bill is patterned after a proposal that was first presented by President Ford. A bill was drafted based on this. He passed out a handout. This bill is to attack crimes committed against a person. He mentioned the five crimes this consists of, murder, rape, assault, kidnapping and robbery. He discussed the 2 year minimum mandatory sentence. The main difference here is that the judges will have some guidelines and if they are going to defer sentences there would be some rules to go by.

PROPONENT, TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:
There are several other bills that will be introduced regarding this same problem. We support this concept. I like this approach. It gives guidelines and it provides for a review process and it gives a county attorney something to work with.

A short recess was taken.

Mr. Honzel stated that the county attorneys association supports this type of legislation. There seems to be no consistency in the sentencing at the present time. This is because of the lack of some

type of guidelines and with this bill we would see more consistency in sentencing. The review process by the judge is a good thing because the judge could then defer a sentence. One of the biggest criticisms of mandatory is that it does away with flexibility but I think with the review process this will do away with that problem. He discussed the exception and said that he would like to see that part deleted. The problem that I see with the bill is that the Kennedy-the federal bill-would provide that there would be no parole for the minimum time.

PROPONENT, TOM DOWLING, REPRESENTING THE COUNTY ATTORNEYS AND THE SHERIFF AND PEACE OFFICERS ASSOCIATION.
He discussed the bill and stated they were in favor of it. People don't feel safe. Why are we letting the habitual offender out. We are trying to address this problem. This bill looks like one we have been working for.

Then followed discussion about a life sentence in Montana and that it is now 18 years.

The hearing closed on House Bill #261.

The meeting adjourned and went into executive session, at 10:45.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

HOUSE BILL #188 and HOUSE BILL #261:
The sub-committee reported. REPRESENTATIVE RAMIREZ, Chairman of the sub-committee moved to adopt the committee report, table HB 188 and pass HB 261.

REPRESENTATIVE COURTNEY moved a sub-stitute motion to table House Bill #188. The motion carried with the vote unanimous.

REPRESENTATIVE COURTNEY moved to amend House Bill 261, on page 4, line 7, to insert "and amphetamines" following subsection (2).

There was discussion about the section on kidnapping and drugs. Representative Conroy mentioned that Senator Turnage is in favor of this bill. The comment was made that the bill says that with regard to opiates we are limiting the discretion of the judge and making it a mandatory sentence for two years. Representative Courtney withdrew his motion.

REPRESENTATIVE RAMIREZ moved "do pass". The motion carried with Representative Lory voting "no".

HOUSE BILL #243:
It was mentioned that Pat McKittrick had a proposed amendment so the committee agreed to pass for the day.

HOUSE BILL #310:
REPRESENTATIVE DAY reported from the water sub-committee. He moved adoption of the committee report, "do pass as amended". The motion carried with the vote unanimous.

The amendment: Amend page 2, section 1, subsection (1)(c), line 8
Following: "1977"
Insert: "However, the board may not extend its date beyond March 1, 1979."

HOUSE BILL #291:
REPRESENTATIVE KEYSER Moved "do pass".
REPRESENTATIVE EUDAILY moved to amend something to the effect of "possessed or transferred the item" or "conceal, misrepresent or transfer, with the presumption that the person knowingly possessed or transferred. Representative Ramirez said that the amendment would make no sense, it was already in the bill. Representative Eudaily withdrew the amendment. He said he wasn't sure just what he wanted it to say anyway.

REPRESENTATIVE LORY moved to amend; strike, "control" and insert: "control or transfer". No action was taken.

REPRESENTATIVE ROTH moved to postpone for the day. The motion carrie with Representatives Keyser and Dussault voting "no".

help to hold off more of them. He said this would keep young offenders from being evaluated under abnormal tense conditions, and not through them in with hardened criminals.

Robert Long, representing the Governor said with the amendments that had been put into this on the Senate floor he would strongly favor supporting this bill.

Senator Thomas said these kids had been tested and testeed, and what they really need is treatment.

Representative Meloy said that is precisely why it needs to be done in the community.

HOUSE BILL 261 was explained by Representative Ramirez. He said you need to understand the bill to understand the fiscal note. He said any judge can give any sentence from one day to the maximum. He doesn't have to send the person to prison, he can put the person on probation. As a result there is a disparity in sentencing. This bill sets out persons who are convicted of crimes against a person would be sent to prison--rape, assault, etc.

Representative Gould spoke in favor of the bill.

Senator Fasbender asked if Representative Ramirez could tell him what percentage of poeple were in prison because of person related crimes as opposed to the others. He was told they had tried to get some figures, but had not been able to get the break down.

Discussion was held on available facilities, costs, prison population effects, chances of better non-recurrance of crimes, etc.

HOUSE BILL 781 was discussed, which was the bill by Representative Marks on state aid for sewer and water in the Boulder Housing area.

Motion by Senator Etchart that House Bill 781 do pass. He said this was in good faith on the part of the Legislature.

Motion was voted, passed.

HOUSE BILL 693, the bill by Representative Meloy on the National Conference of State Legislatures.

Motion by Senator Stephens that this bill be concurred in.

Discussion was held on this, and Senator Regan maintained the Legislature should follow the edict they had put before the other agencies and cut down on the memberships. She felt one or the other should be it. Senator Fasbender said he felt a lot of the work being done by the Council of State Governments was actually being done by the NCL.

Voted and passed, 9:23 A.M.

SENATE F + C COMMITTEE

BILL ~~654~~ 726

VISITORS' REGISTER

DATE 4-13-77

654, 725, 261

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Jack Ramirez	HD 64	261	✓	
Budd Gould		261	✓	
D. R. Lobb	Governor	654	✓	
Gary Erb	RC&B Committee	725	✓	
Bob Durkee	VFW	725	✓	
Jerry Schultz	Butte Local Dev. Corp	725	X	
Marie McCue	Local Committee for MCC	725	X	
Joe Brand	Rep District #28	725		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

April 14, 1977

The thirty seventh meeting of the Senate Finance and Claims Committee met in room 331 of the state capitol on the above date. Roll call was taken and the meeting was called to order at 8:07 A.M. by Senator Thiessen, Chairman.

HOUSE BILL 826 was the authorization to purchase the Russell Painting from the Montana Club.

Motion by Senator Kolstad that this bill be concurred in. Voted and passed, unanimous, 8:09 A.M.

HOUSE BILL 818 for a physical education building at Montana Tech.

Motion by Senator Fasbender, second by Senator Mehrens, voted and passed, unanimous. 8:10 A.M.

HOUSE BILL 833, criminal offenders bill. Discussion was held on the study, and Senator Thomas suggested if they were going to conduct a study they would not know what facilities to build until after the study.

Motion by Senator Story, that this bill do not pass. Voted and passed with Senator Roberts voting no.

HOUSE BILL 160 providing money to edit and publish some Montana Convention proceedings.

Motion by Senator Boylan, second by Senator Flynn that this bill do pass. Voted, passed.

HOUSE BILL 233. Technical assistance to Local Governments through Community Affairs Department

Motion by Senator Himsl, second by Senator Regan that HB 233 do not pass. Voted and passed, with Senator Boylan voting no.

HOUSE BILL 242 the day care sliding scale bill was discussed. Dave Lewis from the office of Budget and Planning said it would depend on whether we were looking to get people off welfare.

There was a motion to pass consideration of this bill until another meeting.

HOUSE BILL 261, the bill for mandatory prison sentences was discussed.

Motion by Senator Thomas that House Bill 261 do pass.

Discussion was held on this bill. Senator Regan made a substitute motion that this bill do not pass. She said she felt this was tying the hands of the judge. When the chief justice addressed us he said he hoped we did not do anything until they had a chance to put the whole package together.

Senator Roberts said every year there was more high flown rhetoric without anyone being involved in it. He said he had been working in the county attorney's office at Libby, and it becomes unworkable. You have no grounds to bargain or work with. We might have to build three or four more wings on the prison.

The substitute motion was voted and failed.

The original motion was voted and passed.

HOUSE BILL 272, the bill on the aging services program was briefly discussed. Senator Boylan said this is too expensive to handle.

Motion by Senator Lockrem that this bill do not pass.

Voted and passed, 8:34 A.M.

HOUSE BILL 282, the agrigultural experiment station was discussed.

Motion by Senator Kolstad that House Bill 282 do pass.

Substitute motion by Senator Regan that House Bill 282 do not pass.

Discussion was held on this bill, and a vote taken on the substitute motion failed.

Discussion was held on the possibility of funding this through the renewable resources money. Senator Fasbender said he did not feel this is the proper place for the renewable resource money to be put. He said there are a lot of places that need that money, and they can divert some of it so long as it meets the criteria.

Motion to amend line 11, and strike from the general fund, insert--since this was not decided for sure she made a substitute motion to pass consideration for this period of time.

Voted and passed.

HOUSE BILL 450, was the bill to create an extension forester. It was stated that there are 6 FTE in Natural Resources that are supposed to be providing that help. Those 6 FTE's basically have been lifted from what was an attempt to help private land owners. The cost of the entension forester is twice as high putting it here as in the Department of Forestry. The DNC could provide the technical help and the extension service the service.

Motion by Senator Roberts that this bill be not concurred in.

Voted and passed. 8:52 A.M. Senator's Flynn and Boylan voting no.

HOUSE BILL 504, to appropriate supplemental moneys for Capital projects. Representative Bardanouve said they got into the water line and it was much worse than they had thought, and they had to go into the whole thing. They didn't have enough money

to complete the project.

Motion by Senator Fasbender that this bill do pass. Voted and passed, unanimous 8:58 A.M.

HOUSE BILL 532, the bill to provide state funding to operate the district courts was discussed. Senator Lockrem said it seemed this was no more than a resolution. He said $95,000 is available LEAA funds, and it has a sunset clause.

Senator Etchart said on page 2, line 15 --in 122 there was a clause for the state to take over all the costs of the courts with few exceptions.

Representative Bardanouve said this bill, as it came in, called for $11 million general fund. They did not buy that so the sponsors of the bill amended this and made it what it is now. I questioned the propriety of what it was then. It was an attempt to take over all the costs of courts all over the state--then a study to come up with what was already in the bill.

Motion by Senator Regan that House Bill 532 do not pass. Voted and passed, unanimous. 9:02 A.M.

HOUSE BILL 622 was discussed, this was the bill to have welfare recipients wor for their check is they were able.

Motion by Senator Fasbender to move the amendments as per enclosed copy for Finance and Claims clarification. Voted and passed 9:06 A.M. No votes were Senators Roberts, Smith, Kolstad, and Nelson.

Motion by Senator Regan that H.B. 622 dp pass as amended. Voted, passed, unanimous 9:08 A.M.

HOUSE BILL 649, funding student transportation was briefly discussed. Motion by Senator Roberts, second by Senator Regan that this bill be tabled. Voted, passed, unanimous.

HOUSE BILL 654 by Meloy, on youth detention was briefly discussed.

Motion by Senator Thomas that this bill do not pass. Voted and passed. Roll call vote 9:44 A.M.

HOUSE BILL 663 by Representative Harper on home health services, was discussed. Senator Regan said the intent was to start three new units. You pay for the care part, but it is a tremendously valuable service. She said she wondered if it were possible for them to be started in a less costly manner.

Senator Stephens said they had passed a similar law in public health which allowed them to be licensed so that they could receive federal funds.

Senator Flynn said many people for the sake of a couple of visits a week were able to be kept out of a rest home. Senator Stephens said he wondered why we should give them money to start a profit organization.

Section 4. There is a new R.C.M. section numbered 35-603 that reads as follows:

35-603. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

Approved May 13, 1977.

CHAPTER NO. 584

AN ACT TO REQUIRE MANDATORY MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE; AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1, 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401, 94-5-503, 95-1507, AND 95-2206, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"**54-132. Criminal sale of dangerous drugs.** *(1)* A person commits the offense of a criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away, manufactures, prepares, cultivates, compounds, or processes any dangerous drug as defined in this act.

(2) A person convicted of criminal sale of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 95-2206.18.

(3) A person convicted of criminal sale of dangerous drugs *not otherwise provided for in subsection (2)* shall be imprisoned in the state prison for a term *of* not less than 1 year *or* more than life.

(4) Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"**54-133. Criminal possession of dangerous drugs.** *(1)* A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(2) Any person convicted of a criminal possession of marihuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marihuana or 1 gram of hashish shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 1 year or by both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 1 year or in the state prison not to exceed 3 years or by both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in 95-2206.18.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection *(2) or (3)* shall be imprisoned by imprisonment in the state prison not to exceed 5 years.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court."

Section 3. Section 54-133.1, R.C.M. 1947, is amended to read as follows:

"**54-133.1. Criminal possession with intent to sell.** (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 54-301. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses one kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 54-301(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 95-2206.18.

(3) A person convicted of criminal possession with intent to sell *not otherwise provided for in subsection (2)* shall be imprisoned in the state prison for a term of not more than 20 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 54-301 are exempt from this section."

Section 4. Section 94-5-102, R.C.M. 1947, is amended to read as follows:

"**94-5-102. Deliberate homicide.** (1) Except as provided in 94-5-103(1)(a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of or an attempt to commit or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 94-5-105 or by imprisonment in the state prison for *a* term *of not less than 2 years or more than* 100 years, *except as provided in 95-2206.18.*"

Section 5. Section 94-5-103, R.C.M. 1947, is amended to read as follows:

"**94-5-103. Mitigated deliberate homicide.** (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*"

Section 6. Section 94-5-202, R.C.M. 1947, is amended to read as follows:

"**94-5-202. Aggravated assault.** (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another;

(b) bodily injury to another with a weapon;

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 20 years, *except as provided in 95-2206.18.*"

Section 7. Section 94-5-302, R.C.M. 1947, is amended to read as follows:

"**94-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 10 years, *except as provided in 95-2206.18.*"

Section 8. Section 94-5-303, R.C.M. 1947, is amended to read as follows:

"**94-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) *Except as provided in 95-2206.18, a* person convicted of the offense of aggravated kidnapping shall be punished by death as provided in 94-5-304 or be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 100 years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 10 years."

Section 9. Section 94-5-401, R.C.M. 1947, is amended to read as follows:

"**94-5-401. Robbery.** (1) A person commits the offense of robbery if, in the course of committing a theft, he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

Section 10. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"**94-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 20 years, *except as provided in 95-2206.18.*

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) *(a)* No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(i) evidence of the victim's past sexual conduct with the offender;

(ii) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(b) If the defendant proposes, for any purpose, to offer evidence described in *subsection 5(a)(i) or 5(a)(ii)*, the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

Section 11. Section 95-1507, R.C.M. 1947, is amended to read as follows:

"95-1507. Sentence of imprisonment for persistent felony offender. (1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years *or* more than 100 years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the *offender's release* on parole or otherwise from a prison or other commitment imposed as a result of the previously felony conviction; and

(c) the offender was more than 21 years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence or if the conviction had been set aside in any post-conviction hearing.

(4) Except as provided in 95-2206.18, the imposition or execution of the first 5 years of a sentence imposed under subsection (2) may not be deferred or suspended."

Section 12. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"95-2206. Sentence. *(1)* Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence for a period not to exceed 1 year for any misdemeanor, for a period not to exceed 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without fine by law for the offense;

(e) impose any combination of subsections *(1)(b)*, *(1)(c)*, or *(1)(d)* above.

(2) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(3) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection *(2)*.

(4) Except as provided in 95-2206.18, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 54-132(2), 54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2), 94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and 94-5-503(2) and (3).

(5) Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section or his successor is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 13. There is a new R.C.M. section numbered 95-2206.17 that reads as follows:

95-2206.17. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 95-2206.18.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 95-2206.18. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 95-2206.18.

Section 14. There is a new R.C.M. section numbered 95-2206.18 that reads as follows:

95-2206.18. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 95-1507(4), 95-2206(4), and subsection (3) of 95-2206.17 do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim.

Section 15. There is a new R.C.M. section numbered 95-2206.19 that reads as follows:

95-2206.19. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 95-2206.18 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

Section 16. **Effective date.** This act is effective on January 1, 1978.

Approved May 13, 1977.